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**7 Attorneys for Plaintiff  
DISCOVER PROPERTY AND  
8 CASUALTY INSURANCE COMPANY**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

13 DISCOVER PROPERTY AND  
14 CASUALTY INSURANCE  
COMPANY, an Illinois Corporation,  
15 Plaintiffs,

15 Plaintiffs,

16 | VS.

**17** WILLIAM SCUDIER, an Individual;  
**18** PATRICK DILLON, a Minor by and  
through his Mother and Guardian ad  
Litem JOANN DILLON.

**Defendants.**

CASE NO.

## **COMPLAINT FOR DECLARATORY RELIEF**

22 Plaintiffs DISCOVER PROPERTY AND CASUALTY INSURANCE  
23 COMPANY alleges:

24       1. Plaintiff DISCOVER PROPERTY & CASUALTY INSURANCE  
25 COMPANY (“DISCOVER”) is and was at all times mentioned a corporation  
26 incorporated under the laws of the State of Illinois with its principal place of business  
27 in St. Paul, Minnesota.

28 | //

1       2. Defendant WILLIAM SCUDIER("SCUDIER") is and was at all times  
2 mentioned an individual residing in Las Vegas, Nevada.

3       3. Defendant PATRICK DILLON, a Minor by and through his Mother and  
4 Guardian ad Litem JOANN DILLON, is an individual, who is, at all material times a  
5 resident of Las Vegas, Nevada("DILLON").

6       4. The jurisdiction of this Court over the subject matter of this action is  
7 predicated on 28 USC 1332. The amount in controversy exceeds \$75,000.00 exclusive  
8 of interest and costs. All defendants reside in this district and the claim arose in this  
9 district.

10      5. At the time of the incident described below, there were two Commercial  
11 General Liability Policies numbered D227P00932, and D227P03602 underwritten by  
12 DISCOVER and issued to Southwest Real Estate Purchasing Group S-52(Discover  
13 Policies). Southwest Real Estate Purchasing Group S-52 in turn provided a  
14 memorandum of property and liability insurance to B&R Property Management, Inc.  
15 and Victory Village 2004 LLC, pursuant to an "Insured, Location and Lender  
16 Endorsement". Victory Village 2004 LLC and B&R Property Management, Inc.,  
17 claim to be Named Insured's on the Discover Policies. A copy of the Discover Policies  
18 are attached as **Exhibit "A"** and **Exhibit "B"** and incorporated as through fully set  
19 forth herein.

20      6. The Discover Policies contains the following pertinent terms and  
21 conditions in the ISO CG 00 01 07 98 general form:

22      Throughout this policy the words "you" and "your" refer to the Named  
23 Insured shown in the Declarations, and any other person or  
24 organization qualifying as a Named Insured under this policy. The  
words "we", "us" and "our" refer to the company providing this  
insurance.

25      The word "insured" means any person or organization qualifying as  
such under Section II Who Is An Insured.

26      Other words and phrases that appear in quotation marks have special  
27 meaning. Refer to Section V Definitions.

28      ///

1 SECTION I COVERAGES

2 COVERAGE A BODILY INJURY AND PROPERTY DAMAGE  
3 LIABILITY

4 1. Insuring Agreement

5 a. We will pay those sums that the insured becomes legally  
6 obligated to pay as damages because of "bodily injury" or  
7 "property damage" to which this insurance applies. We will  
8 have the right and duty to defend the insured against any "suit"  
9 seeking those damages. However, we will have no duty to  
defend the insured against any "suit" seeking damages for  
"bodily injury" or "property damage" to which this insurance  
does not apply. We may, at our discretion, investigate any  
"occurrence" and settle any claim or "suit" that may result.  
But:...

10 b. This insurance applies to "bodily injury" and "property  
11 damage" only if:

12 (1) The "bodily injury" or "property damage" is  
caused by an "occurrence" that takes place in the  
"coverage territory";

13 (2) The "bodily injury" or "property damage" occurs  
14 during the policy period; ...

15 2. Exclusions

16 This insurance does not apply to:...

17 a. Expected Or Intended Injury

18 "Bodily injury" or "property damage" expected or  
19 intended from the standpoint of the insured. This  
exclusion does not apply to "bodily injury" resulting  
20 from the use of reasonable force to protect persons or  
property.

21  
22 COVERAGE B PERSONAL AND ADVERTISING INJURY  
23 LIABILITY

24 1. Insuring Agreement

25 a. We will pay those sums that the insured becomes legally  
26 obligated to pay as damages because of "personal and  
advertising injury" to which this insurance applies. We will  
27 have the right and duty to defend the insured against any "suit"  
seeking those damages. However, we will have no duty to  
defend the insured against any "suit" seeking damages for  
"personal and advertising injury" to which this insurance does

1 not apply. We may, at our discretion, investigate any offense  
2 and settle any claim or "suit" that may result. But:  
3 ...  
4

5 No other obligation or liability to pay sums or perform  
6 acts or services is covered unless explicitly provided for under  
7 Supplementary Payments Coverages A and B.

8 b. This insurance applies to "personal and advertising injury"  
9 caused by an offense arising out of your business but only if the  
10 offense was committed in the "coverage territory" during the  
11 policy period.

12 **2. Exclusions**

13 This insurance does not apply to:

14 a. "Personal and Advertising injury":  
15

16 (1) caused by or at the direction of the insured with the  
17 knowledge that the act would violate the rights of another and  
18 would inflict "personal and advertising injury".  
19 ...  
20

21 (4) arising out of a criminal act committed by or at the  
22 direction of the insured.  
23

24 **SECTION II WHO IS AN INSURED**

25 1. If you are designated in the Declarations as:  
26

27 ...  
28

29 c. A limited liability company, you are an insured. Your  
30 members are also insureds, but only with respect to the  
31 conduct of your business. Your managers are insureds, but  
32 only with respect to their duties as your managers.  
33 ...  
34

35 2. Each of the following is also an insured:  
36

37 a. Your "employees", other than either your "executive  
38 officers,...or your managers...but only for acts within the scope  
39 of their employment by you or while performing duties related  
40 to the conduct of your business. ....  
41

42 **SECTION V DEFINITIONS...**

43 3. "Bodily injury" means bodily injury, sickness or disease  
44 sustained by a person, including death resulting from any of these at  
45 any time.  
46

1           4. "Coverage territory" means:

2           a. The United States of America (including its territories and  
3           possessions), Puerto Rico and Canada;

4           ...

5           5. "Employee" includes a "leased worker". "Employee" does not  
6           include a "temporary worker".

7           ...

8           13. "Occurrence" means an accident, including continuous or  
9           repeated exposure to substantially the same general harmful  
10          conditions.

11          14. "Personal and advertising injury" means injury, including  
12          consequential "bodily injury", arising out of one or more of the  
13          following offenses:

14          a. False arrest, detention or imprisonment;

15          ...

16          c. The wrongful eviction from, wrongful entry into, or invasion  
17          of the right of private occupancy of a room, dwelling or premises that  
18          a person occupies, committed by or on behalf of its owner, landlord or  
19          lessor;

20          ...

21          e. Oral or written publication, in any manner, of material that  
22          violates a person's right of privacy;

23          In addition, the Discover Policies contain an endorsement entitled **ABUSE**  
24          **OR MOLESTATION EXCLUSION**, which provides, in pertinent part:

25          This endorsement modifies insurance provided under the following:

26          **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

27          The following exclusion is added to Paragraph 2., Exclusions of  
28          Section I — Coverage A - Bodily Injury And Property Damage  
29          Liability and Paragraph 2., Exclusions of Section I — Coverage B —  
30          Personal And Advertising Injury Liability:

31          This insurance does not apply to "bodily injury", "property damage"  
32          or "personal and advertising injury" arising out of:

33          1. The actual or threatened abuse or molestation by anyone of any  
34          person while in the care, custody or control of any insured, or

35          2. The negligent:

- 1       a.. Employment;
- 2       b Investigation;
- 3       c. Supervision;
- 4       d. Reporting to the proper authorities, or failure to so report; or
- 5       e. Retention;

6                   of a person for whom any insured is or ever was legally responsible  
7                   and whose conduct would be excluded by Paragraph 1. above

8              7. Plaintiffs are informed and believe that, in or about 2004, defendant  
9             SCUDIER was employed by either VICTORY VILLAGE or B&R. In October of  
10            2004, Dillon moved into Apartment 627 at Victory Village. According to the  
11            complaint filed by Dillon, beginning in 2005, SCUDIER began an improper  
12            relationship with Patrick Dillon, and in January of 2006, began an illicit sexual  
13            relationship with Patrick Dillon. According to the complaint, this illicit and illegal  
14            relationship included the allegation that SCUDIER performed oral and anal sex on  
15            Patrick Dillon, with frequency, through at least August of 2006. A true and correct  
16            copy of the Second Amended (and currently operative) Complaint in the case of  
17            *Patrick Dillon etc., v. William Scudier, et al.*, Clark County District Court Case  
18            number A-10-609918-C is attached hereto as **Exhibit C** ("Underlying Action").

19              8. The specific causes of action against SCUDIER are as follows:

21              **Battery** – wherein it is alleged “SCUDIER harmfully and offensively  
22            touched PATRICK by performing sexual acts on PATRICK” and  
23            “SCUDIER intentionally performed sexual acts on PATRICK.” **Exhibit**  
24            **C**, Underlying Action at ¶¶28 & 29;

26              **Assault** – wherein it is alleged “PATRICK was reasonably placed in fear  
27            of imminent harm or offensive conduct for the duration of SCUDIER’s  
28

1 sexual relation with PATRICK” and “PATRICK’S apprehension was  
2 reasonable because SCUDIER already had demonstrated a willingness to  
3 perform sexual acts on PATRICK.” **Exhibit C**, Underlying Action at  
4 ¶¶34 & 35;

5

6 **Intentional Infliction of Emotional Distress** – wherein it is alleged  
7 “SCUDIER sexual acts upon PATRICK were extreme and outrageous”  
8 and “PATRICK suffered extreme emotional distress as a result of  
9 SCUDIER’s conduct including uncertainty about his sexual orientation  
10 and a skewed perception of relationships between adult males and  
11 adolescent boys.” **Exhibit C**, Underlying Action at ¶¶38 & 39;

12

13 **False Imprisonment** – wherein it is alleged “SCUDIER restrained  
14 PATRICK within SCUDIER’s apartment without legal justification or  
15 consent” and “The lack of legal justification and consent is evidenced by  
16 the repeated protestations of PATRICK’S mother, JOANN DILLON,  
17 against her son spending time with SCUDIER” and “SCUDIER knew that  
18 PATRICK was being physically abused at home and therefore was  
19 unlikely to leave SCUDIER’s apartment” and “At some point in February  
20 2006, SCUDIER took PATRICK to the Fiesta Hotel and Casino in  
21 Henderson, Nevada” and “At some point in June 2006, SCUDIER took  
22 PATRICK to the Green Valley Ranch Resort, Spa & Casino in  
23 Henderson, Nevada” and “At some point in June 2006, SCUDIER took  
24 PATRICK to the Longhorn Hotel Casino in Las Vegas, Nevada” and  
25 “At some point in August 2006 SCUDIER took PATRICK on a trip to  
26 Zion National Park in Utah” and “These trips were without legal  
27 justification” and “PATRICK could not reasonably have exited or escaped

28

these premises, which were miles from his home.” **Exhibit C**, Underlying Action at ¶¶42-50.

9. SCUDIER, VICTORY VILLAGE and B&R tendered their respective defenses and requested indemnity in the Underlying Action to plaintiffs under the Discover Policies. Plaintiffs undertook SCUDIER, VICTORY VILLAGE and B&R's defense in the Underlying Action under a reservation of rights, including the right to file this action seeking a declaration of the Court that no coverage exists for the claims asserted against SCUDIER, VICTORY VILLAGE and B&R under the terms and provisions of the Discover Policies.

10. On April 4, 2012 summary judgment was entered on behalf of defendants VICTORY VILLAGE and B&R in the underlying matter. A true and correct copy of the Notice of Entry of Order in the Underlying matter is attached hereto as **Exhibit D**.

11. The Discover Policies only applies to the extent that there is a claim against SCUDIER, B&R or VICTORY VILLAGE for "bodily injury" caused by an "occurrence." The acts of SCUDIER are non-accidental, and therefore injuries to Patrick Dillon resulting therefrom cannot be the result of an "occurrence".

12. The Discover Policies' coverage excludes injuries that are either "expected or intended" by the Insured, and specifically exclude coverage for damages because of "bodily injuries" caused by ABUSE OR MOLESTATION. These exclusions are clear, prominent and enforceable, and exclude coverage under the policy for any injury caused to DILLON that is the subject of the Underlying Lawsuit.

## **FIRST CLAIM FOR RELIEF**

**(Against All Defendants for Declaratory Relief)**

13. Plaintiffs reassert and re-allege the allegations contained in Paragraphs 1 through 11. above, and incorporate them as if they were fully set forth here.

14. A controversy has arisen and exists by and between plaintiffs on the one hand, and defendants on the other, insofar as plaintiffs maintain that no coverage exists

1 under the Discover Policies for the claims DILLON asserts against SCUDIER in the  
2 Underlying Action.

3       15. Plaintiffs are informed and believe that defendants maintain to the  
4 contrary that coverage exists under the Discover Policies for the claims DILLON  
5 asserts against SCUDIER in the Underlying Action.

6       16. Plaintiffs are also informed and believe that DILLON, through their  
7 attorney, may attempt to assert an entitlement to insurance benefits under the Discover  
8 Policies by virtue of SCUDIER's status as an insured, and as potential judgment  
9 creditors of SCUDIER.

10      17. Plaintiffs dispute any claims by DILLON against SCUDIER to any  
11 entitlement to funds from plaintiffs via the Discover Policies.

12      18. Therefore, an actual justiciable controversy presently exists between  
13 plaintiffs and DILLON and SCUDIER relating to whether any coverage or potential  
14 for coverage exists under the Discover Policies for claims asserted by DILLON against  
15 SCUDIER in the Underlying Action, and a declaration of this Court is necessary to  
16 determine the rights and obligations of DISCOVER, DILLON, and/or SCUDIER  
17 under the Discover Policies.

18       WHEREFORE, DISCOVER prays for judgment against Defendants and each of  
19 them as follows:

20      1. For a declaration that no coverage or potential for coverage exists under  
21 the terms and provisions of the Discover Policies for the claims by DILLON against  
22 SCUDIER in the Underlying Action.

23      2. For a declaration that DISCOVER has no duty to defend or indemnify  
24 claims by DILLON against SCUDIER in the Underlying Action.

25      3. For judgment against SCUDIER for reimbursement of monies plaintiffs  
26 expended to date in defending and/or indemnifying SCUDIER against claims DILLON  
27 asserted against SCUDIER in the Underlying Action in an amount to be established at  
28 trial, including interest at the legal rate.

4. For the costs incurred in this action.
5. For such other and further relief as the Court may deem just and proper.

4 | DATED: May 17, 2012

## MURCHISON & CUMMING, LLP

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